Talon Resources, Inc. *and* Robert Webb and United Mine Workers of America, District 17, AFL–CIO. Cases 9–CA–32910–1 and 9–CA–32961–2

March 15, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Upon a charge and an amended charge filed in Case 9–CA–32910–1 by Robert Webb, an individual, on May 17 and August 2, 1995, respectively, and a charge filed in Case 9–CA–32961–2 by the Union on May 30, 1995, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on August 2, 1995, against Talon Resources, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Subsequently, on August 11, 1995, the Respondent filed an answer to the complaint. However, on February 5, 1996, the Respondent withdrew its answer.

On February 9, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On February 13, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent, on February 5, 1996, withdrew its answer to the complaint with the understanding that a Motion for Summary Judgment would be filed. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true.[1]

Accordingly, based on the withdrawal of the Respondent's answer to the complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the operation of coal mines including a mine near Campbell's Creek, West Virginia. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations, purchased and received at its mining operations in Kanawha and Logan Counties, West Virginia, goods valued in excess of $50,000 directly from points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Respondent and the Union have been parties to the National Bituminous Coal Wage Agreement of 1993, and the employees of the Respondent, as described in article 1A of the National Bituminous Coal Wage Agreement of 1993, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since December 13, 1984, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is in effect from February 17, 1994, through August 1, 1998 (the 1994–1998 Agreement). Since December 13, 1984, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since November 17, 1994, the Respondent has failed to continue in full force and effect all the terms and conditions of the 1994–1998 Agreement by failing to provide the required health and dental insurance benefits and to pay insurance claims of the unit employees pursuant to article XX of the agreement. In addition, since February 1995, the Respondent has been delinquent and has failed to remit to the Union dues deducted from employee paychecks in a timely manner as required by article XV of the 1994–1998 Agreement. The Respondent engaged in all this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of

Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by unilaterally failing to provide the required health and dental insurance benefits and to pay insurance claims of the unit employees since November 17, 1994, we shall order the Respondent to restore the employees' health and dental insurance benefits, pay unit employees' insurance claims, and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent violated Section 8(a)(5) and (1) by failing since February 1995 to remit to the Union in a timely manner, dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such withheld dues to the Union as required by the Agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Talon Resources, Inc., Alum Creek, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in full force and effect all the terms and conditions of the 1994–1998 Agreement by failing to provide the required health or dental insurance benefits or to pay insurance claims of the unit employees pursuant to article XX of that Agreement. The following employees are included in the unit:

> The employees of the Respondent, as described in Article 1A of the National Bituminous Coal Wage Agreement of 1993.

(b) Failing to remit to the United Mine Workers of America, District 17, AFL–CIO in a timely manner dues deducted from employee paychecks as required by article XV of the 1994–1998 Agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the unit employees' health and dental insurance, pay their insurance claims, and make them whole, with interest, for any expenses incurred as a result of its failure to do so since November 17, 1994, in the manner set forth in the remedy section of this decision.

(b) Remit to the Union any withheld dues that it has failed to remit to the Union since February 1995, as are required by the 1994–1998 Agreement, with interest computed in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Alum Creek, West Virginia, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in full force and effect all the terms and conditions of the 1994–1998 Agreement by failing to provide the required health or dental insurance benefits or to pay insurance claims of our unit employees pursuant to article XX of that Agreement. The following employees are included in the unit:

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Our employees as described in Article 1A of the National Bituminous Coal Wage Agreement of 1993.

WE WILL NOT fail to remit in a timely manner to the United Mine Workers of America, District 17, AFL–CIO dues deducted from employee paychecks as required by article XV of the 1994–1998 Agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore our unit employees' health and dental insurance, pay their insurance claims, and make them whole, with interest, for any expenses incurred as a result of our failure to do so since November 17, 1994.

WE WILL remit to the Union any withheld dues that we have failed to remit to the Union since February 1995, as required by the 1994–1998 Agreement, with interest.

TALON RESOURCES, INC.